

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMON CARDENAS LOPEZ,

Defendant and Appellant.

B287024

(Los Angeles County
Super. Ct. No. MA069746)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa Strassner, Commissioner. Affirmed.

Michael C. Sampson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Ramon Cardenas Lopez was charged by information with two counts of making criminal threats (Pen. Code, § 422, subd. (a) [counts 1 & 2]),¹ one count of carrying a concealed firearm (§ 25400, subd. (a)(2) [count 3]), and two counts of assault with a firearm (§ 245, subd. (b) [counts 4 & 5]). It was also alleged that defendant personally used a firearm (§ 12022.5, subd. (a) [counts 1, 2, 4 & 5]), and that a principal was armed with a firearm (§ 12022, subd. (a)(1) [counts 1 & 2])). The jury found defendant guilty of the criminal threats and concealed weapon counts, but acquitted him of the assaults. The jury found true the allegations that a principal was armed with a firearm, but found the allegation that defendant personally used a firearm not true.

Defendant appeals, arguing the trial court abused its discretion when it admitted evidence defendant told the arresting deputy he was a member of the Sinaloa drug cartel. We affirm.

FACTUAL BACKGROUND

On October 14, 2016, A.C. and I.A. were working as security guards at El Camaron Pelao restaurant in Palmdale. One of their duties was to pat down patrons as they entered the restaurant. Defendant approached A.C. to enter the restaurant. As A.C. tried to pat down defendant, he began “dancing” around, and told A.C. he urgently needed to use the restroom. A.C. allowed defendant to enter the restaurant, even though he had not conducted a thorough pat down, so he could use the restroom.

Later that evening, a customer complained that defendant was “grabbing at his waist” and appeared to be armed with a

¹ All undesignated statutory references are to the Penal Code, unless otherwise indicated.

gun. I.A. noticed a bulge near defendant's waistline. A.C. and I.A. approached defendant, and asked him to follow them outside. He initially refused, but eventually walked out of the restaurant with A.C. and I.A.

Once outside, A.C. explained that they had received complaints, and needed to search defendant. Defendant denied he was carrying a weapon. A.C. started to pat down defendant, and when he reached defendant's waist, he felt something. Before A.C. could ask defendant what it was, defendant pulled a gun out of his pocket, cocked it, and pointed it at A.C. and I.A. He asked them "who wanted the first shot," waving the gun from side to side with his finger on the trigger. A.C. stepped in front of I.A. to protect her. Defendant pointed the gun at A.C.'s face.

A.C. thought he was going to die. As defendant was pointing the gun at A.C., he mentioned "Sinaloa." A.C. understood his remarks to be a "[c]artel . . . threat" that his "life is in danger" According to I.A., defendant said "he was a hitman from Sinaloa." She understood "Sinaloa" to be a threat.

I.A. tried to convince defendant to hand over the gun so he could reenter the restaurant. After approximately 10 minutes, defendant removed a bullet from the gun's chamber, removed the magazine, and gave the gun to I.A. He then reentered the restaurant.

Once defendant was inside, I.A. called police. I.A. did not want anyone to know she had called 911. She was afraid because "defendant had told us that he was a hitman." She was afraid to make statements that night.

A.C. and I.A. were interviewed by Los Angeles Sheriff's Deputy Cesar Vilanova. Both A.C. and I.A. testified they told Deputy Vilanova that defendant had threatened them with a

gun, and told them he was from “Sinaloa.” They also testified they were afraid to talk to police, because of defendant’s threats.

According to Deputy Vilanova, A.C. and I.A. were both “in a state of shock” when he interviewed them. Neither I.A. nor A.C. told Deputy Vilanova that defendant pointed a gun at them, or that he mentioned “Sinaloa.”

Deputy Vilanova arrested defendant, and advised him of his *Miranda* rights.² As Deputy Vilanova was driving defendant to the station, defendant told him “I am from the Sinaloa Cartel.”

After the incident, A.C. was “really nervous.” He returned to work at the restaurant two times, but then quit working as a security guard because he was scared of “the cartel.” I.A. also stopped working as a security guard because she was afraid.

DISCUSSION

Defendant contends the trial court erred when it admitted defendant’s “confess[ion] to the arresting officer that he was a member of the Sinaloa Cartel.” He does *not* claim any error related to the the victims’ testimony about the Sinaloa cartel. We are not persuaded.

1. Procedural History

At trial, Deputy Vilanova testified that defendant made various statements to him during his arrest. Before he testified to the content of those statements, defense counsel requested a sidebar conference. At sidebar, Deputy Vilanova explained that defendant told him he was a member of the Sinaloa drug cartel, while being transported to the station.

Defense counsel objected to the proffered testimony on relevancy grounds, and argued that it was impermissible character evidence, and did not corroborate the witnesses’

² *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

testimony. The trial court initially agreed that the statement was not relevant, and was more prejudicial than probative. After a short recess, the trial court changed its view, finding that the officer's "testimony would be relevant for corroboration purposes," and was not character evidence.

Immediately following the deputy's testimony, the court instructed the jury: "[Y]ou are to consider that statement, the deputy's testimony concerning the defendant's statement about Sinaloa, only for the purpose of evaluating the credibility of other witnesses during this trial. You are not to consider it for any other purpose. It is not to be considered substantive evidence against the defendant."

2. Analysis

"'Only relevant evidence is admissible [citations], and all relevant evidence is admissible unless excluded under the federal or California Constitution or by statute. [Citations.] Relevant evidence is defined in Evidence Code section 210 as evidence 'having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.'" The test of relevance is whether the evidence tends " 'logically, naturally, and by reasonable inference' to establish material facts [Citations.]" [Citation.] The trial court has broad discretion in determining the relevance of evidence [citations] but lacks discretion to admit irrelevant evidence.' " (*People v. Heard* (2003) 31 Cal.4th 946, 972-973.)

The trial court's discretion to admit evidence is subject to the requirements of Evidence Code section 352. Relevant evidence may be excluded if its probative value is outweighed by a danger of undue prejudice, is merely cumulative to other evidence, or will consume an undue amount of time. (*People v.*

Branch (2001) 91 Cal.App.4th 274, 281-282.) A trial court's ruling to admit or exclude evidence is reviewed for abuse of discretion. (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1373.)

Defendant admits, as he must, that his statements to the victims were probative of their sustained fear. (See, e.g., § 422, subd. (a).) He contends the deputy's testimony was irrelevant, because evidence of defendant's statements to the deputy did not corroborate the victims' account of the crime. (See, e.g., *People v. MacEwing* (1955) 45 Cal.2d 218, 224-225 (*MacEwing*), citations omitted ["corroborating evidence . . . tends to connect the defendant with the commission of the crime in such a way as may reasonably satisfy the jury that the witness who must be corroborated is telling the truth [¶] . . . [¶] . . . corroboration is not adequate if it requires aid from the testimony of the person to be corroborated in order to connect the defendant with the commission of the offense charged"].)

Defendant's argument is not correct. First, the authority he relies upon concerns statutes *requiring corroborating evidence to support a conviction*. (*MacEwing, supra*, 45 Cal.2d at p. 225; see also § 1111, Evid. Code, § 1108.) No such requirement exists here. The evidence was highly probative of the victims' credibility, which the defense vigorously attacked based on their failure to report all the facts to police on the night of the crimes. (Evid. Code, § 780 ["the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing"].)

Defendant also contends the evidence was inadmissible character evidence. Evidence Code section 1101 provides that "evidence of a person's character or a trait of his or her character

. . . is inadmissible when offered to prove his or her conduct on a specified occasion.” (*Id.*, subd. (a).) The prosecution did not argue or attempt to prove defendant was in fact a gang member or a member of the Sinaloa cartel. We are not persuaded the jury would consider this statement to police as evidence of defendant’s character, particularly since the trial court admonished the jury to consider it only to judge the credibility of witnesses.

Lastly, any purported error was necessarily harmless, under any standard of prejudice. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *Chapman v. California* (1967) 386 U.S. 18, 24.) The jury was instructed to only consider the evidence to assess witness credibility. (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 598 [juries are presumed to follow limiting instructions].) Moreover, the evidence was already before the jury; the deputy’s single remark was not more inflammatory than the facts already in evidence. Lastly, the jury’s verdict undercuts defendant’s claim that the evidence was unduly prejudicial. Defendant was acquitted of the most serious charges in the case, dispelling any concern that the evidence tainted the jury’s view of defendant’s character.

DISPOSITION

The judgment is affirmed.

GRIMES, Acting P. J.

WE CONCUR:

STRATTON, J.

ADAMS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.